DOCUMENT RESUME

ED 044 105 JC 700 248

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TITLE A Discussion of the Definition of Junior Colleges in Relation to Secondary and Higher Education.
PUB DATE Nov 70
NOTE 18p.; Seminar paper

EDRS PRICE EDRS Price MF-$0.25 HC-$1.00
DESCRIPTORS *Court Litigation, *Educational Innovation, *Educational Legislation, *Educational Trends, *Junior Colleges, State Legislation

ABSTRACT

The legal position of junior colleges within the traditional hierarchy of American education is the topic of this paper. It is the author's contention that the junior college system fits more appropriately in the realm of higher education than in secondary education. To support this assertion, he reviews the levels assigned the junior college by a few of the states. The state of Florida excludes junior colleges both from public school education and from higher education. New York state also provides for junior colleges, but without specifically describing their functions. California includes junior colleges in the category of secondary education, a term more broadly applied than in the traditional sense, for technical schools, adult schools, and junior colleges are included in this category. Besides state legislation, several court decisions showing the interpretation of this legislation are also presented. Many of these decisions represent an attempt by the courts to apply an innovative concept to a traditional frame of reference. Many court decisions have been based on the belief that the kind of curriculum is important in assigning schools a position in the American educational system. (RC)

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ED044105

# "A DISCUSSION OF THE DEFINITION OF JUNIOR COLLEGES IN RELATION TO SECONDARY AND HIGHER EDUCATION"

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JC 700 248

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Ed. 603
November 16, 1970

UNIVERSITY OF CALIF.
LOS ANGELES

NOV 30 1970

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The question of the exact legal position of the burgeoning community or junior college in relation to the traditionally acceptable formula of hierarchical levels in education, is a dilemma the courts have not, as yet, clearly faced. There exists, I affirm, ample evidence to support the position of the junior college as more appropriately embraced within the concept of "higher education," than "secondary education." It should be noted that this opinion is not based upon the authority of the courts alone, but upon the weight of authority as it is derived from several sources.

Initially, it is essential to understand that the junior college is primarily an American innovation, and as such, has assumed a position in the traditional graduation from primary to secondary, and finally to higher education. The historical tendency has been to identify the high school level with the term "secondary,"[1] and the college or university level with the term "higher education."[2] These terms are culturally derived, and are subject to legitimate speculation as to their relevancy in modern education. It stands to reason that the second elementary grade is "higher education" in relation to the preceding levels. Questions arise pertaining to the expressed need for the strict separation of the terms "secondary," and "higher education." Intellectually, the concept of a continuum, graduating from basic toward more advanced study is much more pleasing.

This sharp delineation of function is essentially involved with a definition of curriculum. Educators have found it facilitates planning if some conceptual framework is available, providing scholastic parameters, beyond which they need not feel responsible concern. The junior college, on the other hand, attempts little delineation of the parameters of curriculum beyond a commitment to provide assistance where needs arise. Curriculum at the junior college level overlaps both traditional-secondary and higher education boundaries. Students attending classes of remedial education, below the secondary level, are enrolled in the same junior college as students taking college-parallel courses. Universities offer full credit to graduates of an accredited junior college associate level program, and high schools frequently have associations with the same junior college for training in vocational programs, and in some instances, for college level exposure.

Although not fully endorsing the tripartite (primary-secondary-higher) conceptualization of education, I do recognize its dominance in current American education, and therefore will attempt to assert a legal position for the junior college within that paradigm.

Discussion:

Junior colleges share with all institutions of public education, the distinction of being creatures of legislative intent and declaration. The institution is bound, by its public derivation, to serve the people of the respective state in the manner prescribed by the legislature of the state. Florida provides an interesting example of a state with an extensive, well-planned junior college system. The Florida Statutes provide:

> "The institutions of higher learning shall consist of all state supported educational institutions offering work above the public school level, other than junior colleges that are established by law, together with all activities and services authorized by law to be administered by or through those institutions."[3]

Clearly, Florida intends that junior colleges will be apart from traditional concepts of "public school education." Equally interesting, Florida has excluded junior colleges from "institutions of higher learning." It would be helpful to look again at the statutes, and attempt to locate the exact position of junior colleges in Florida, by defining the term "public school education." Looking further:

> "The public schools shall consist of nursery schools and kindergarten classes; elementary and secondary school grades and special classes; adult part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under control of school boards."[4]

Public schools in the state of Florida include the concept of secondary education. But, interestingly, it does not incorporate the junior college within secondary education, nor within the broader concept of public school education. Florida has carefully worded the junior college out of both its definition of public school education, and its definition of higher education. A clear intent is manifest to place the junior college in a position unique to both public and higher education.

> "Junior colleges shall consist of all educational institutions operated by local junior college district boards of trustees under specific authority and regulations of the state board and offering programs of general and academic education parallel to that of the first and second years of work in institutions in the state university system, occupational education and courses and programs for adult continuing education."[5]

The legislative intention is apparent in Florida that junior colleges occupy a unique role in that state's educational construct. In response to an inquiry as to the position of Florida's junior colleges, the Attorney General of Florida issued an Opinion that junior colleges do not form a part of the secondary school system of that state.[6] This was issued in response to a definition in the Federal Register,[7] that included public junior colleges within the definition of secondary schools, when they are extensions of secondary school systems. The Federal Register (1965) reflects an interpretation of the junior college movement of several years ago. The

position of most states is to remove the junior college boards of trustees from local school boards. Florida provides an example of recent legislation.

It is valuable to note the initial status of a dichotomous conflict in arriving at a satisfactory definition of junior colleges. Legislative declaration would indicate a position for the junior college unique and apart from the traditional "pigeonholes" in American education. Interpretative authorities, on the other hand, appear reluctant to release junior colleges from the bonds of tradition, and insist on placing them somewhere in the original schema.

New York State attempts to create its junior (community) colleges without the specificity of legislative declaration characterized by Florida (supra).

> "Community Colleges. Colleges established and operated pursuant to the provisions of this article, either individually or jointly by counties, cities, intermediate school districts, or school districts approved by the state university trustees, and providing two-year post-secondary programs pursuant to regulations prescribed by the state university trustees and receiving financial assistance from the state therefore."[8]

New York State makes no attempt to place junior colleges on the "educational chopblock." Such inexplicit creating legislation is well illustrated in a recent Wyoming case. In Goshen County Com. Col. Dist. v. School District No.2, the Supreme Court of Wyoming was confronted with legislation specifying authority to create elementary, high schools, and universities, as well as "such other institutions as may be necessary."[9]

That court found junior colleges to be "other institutions," and not included with either high schools or universities.

It is important to note at this time just what junior colleges are not, before an adequate explanation of what they are can be arrived at. There has, to this point, been one continuing strand of intention apparent in the legislation discussed (supra). Junior colleges offer "programs of general and academic education parallel to that of the first and second years of work in institutions in the state university system...."[10] Florida has placed the junior college beyond the secondary school. New York concurs: "... providing two-year post-secondary programs...."[11] Although there is manifest a legislative reluctance to place the junior college within the realm of traditional "higher education," there exists an equally impressive inclination to remove junior colleges from the traditional secondary school concept.

California provides an interesting and unique approach to the dilemma.

> "The public junior colleges are secondary schools and shall continue to be part of the public school system of this State. The Board of Education shall prescribe minimum standards for the formation and operation of junior colleges and exercise general supervision over public junior colleges."[12]

On first blush, one might clearly interpret California's declaration to include junior colleges within the secondary school system. This would be in direct conflict with the legislative intents of both New York and Florida. The conflict

resolves itself when a clear declaration of the legislative meaning of "secondary schools" as used in California is introduced.

> "Designation of secondary schools. The secondary schools of the State are designated high schools, technical schools, adult schools, and junior colleges."[13]

Interestingly enough, junior colleges in the state of California are indeed part of the secondary schools, but not secondary schools in the traditional sense of high schools. Here, the term secondary assumes a much broader meaning, including both high school and the junior college, but not as one in the same. In approaching the definition of junior colleges from a curriculum standpoint, California falls more closely in line with other authorities.

> "Public junior colleges shall offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree."[14]

California does not include the junior college within a definition of higher education, but it clearly indicated the junior college to be beyond the high school level. California's definition of secondary schools is rather unique, and possibly confusing. It is fair to observe the dichotomous inclinations toward junior colleges well illustrated in California. One

force is attempting to define the junior college in a new and unique position, while more traditional forces demand a position strictly defined by curriculum. The legislature establishes a continuum of secondary education, flowing from high school into junior college. At the same time, the legislature is careful to define junior college curriculum as: "... (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or the associate in science degree." This curriculum is congruent with that of the majority of junior colleges, and by definition is beyond the high school level.

The majority of court decisions attempting to delineate a position for the junior college in American education reflect the legislative dilemma of striving to apply an innovative concept to a traditional frame of reference. These courts have in most instances, based their decision upon the more empirical diagnosis of the curriculum of the junior college. Courts have been strongly influenced by the fact that junior colleges see their responsibility in educating those at the post-secondary level. The Supreme Court of New Mexico, in Daniels v. Watson,[15] held that the legislative intent in that state sustained the contention junior colleges legislation was outside constitutional provisions relating to secondary schools. Again, this court placed great store in the legislative intent, while attempting to define a position for the junior college. This court denied the contention that the

junior college district is a school district to be governed by the constitutional provisions relating to schools and school districts.[16] Significant authority has been placed upon the declaration by the legislature, that the junior college is more than a high school, and includes more than is traditionally embraced in the concept of secondary school.[17]

Three Rivers Junior College District v. Statler, a 1967 Missouri case, found: "There can be no serious question of the power of the legislature to authorize organization of the junior college districts providing instruction for high school graduates."[18] The legislature provided a method for organization of junior college districts to "provide instruction, classes, school or schools for pupils resident within the junior college district who have completed an approved high school course."[19] Once again the junior college is defined in terms of curriculum, and is strictly post-secondary in conception. Beyond a recognition of the legislative declaration, this high court includes a most critical interpretation permeating judicial thought on the subject. The court recognizes that "it was common knowledge that the demand and need throughout the state for higher education called for the expansion of public educational facilities."[20] The court refers to a "demand and need ... for higher education." It is implicit in this statement that the court not only recognized the legislative intent to place the junior college beyond the secondary level, but the court goes further, and places junior colleges directly in higher education.

A recent Arizona decision concurs with the Three Rivers[21] case. In Arizona State Bd. of Dir. v. Phoenix Union H.S. Dist., the court declared: "The obvious purpose of establishing a statewide system of integrated junior college districts was not only to provide educational facilities in the localities where the students resided, but to relieve the load on the existing state universities created by the increasing demand for higher educational opportunities."[22]

It is valuable to keep in mind that these courts are attempting to reconcile contentions that junior college districts are congruent with public or secondary school districts. The court is placed in the position of being forced, by practical necessity, to define the position of the junior college by traditional measures of American educational institutions. As a consequence of this necessity, the dichotomous personality of the dilemma begins to shift toward traditional definitions. The courts are not so much attempting to interpret legislative intent differently, as to reconcile such intent with more practical demands.

In an early case dealing directly with the question of definitions, a California court, in Mitchell v. Whittier College,[23] held that Long Beach Junior College was a "college" in the light of the fact that the institution was organized for high school graduates. This court places greatest authority in the post-secondary nature of the students and curriculum.

Supporting the position that the curriculum is the greatest determining factor in such decisions, the court in Stowe

Preparatory School, Inc. v. Town of Stowe,[24] distinguished public schools from colleges and universities on the basis that no college or university work is offered. Essentially, this court supports the contention of this paper, that curriculum determination is the critical ingredient when attempting to determine the position of a school in the American system of education. The reader is directed to the continuing thread of curriculum identity present in all junior college legislation. The junior college curriculum is post-secondary by declaration, and therefore, higher educational in the traditional framework.

In an important Texas case the trial court found: "Junior college is a school offering courses on the level of difficulty for the first two years above high school level."[25] In that same case, Nixon-Clay Commercial College v. Woods, the court declared the term junior college not to have its meaning limited to institutions offering Bachelor degrees.[26] In the opinion of this court, junior colleges were not only to be included with traditional colleges and universities in higher education, but also extended down to include such institutions as junior business colleges.[27]

The weight of authority within the law includes the junior college within traditional concepts of higher education, while at the same instant, attempting to expand the junior college to more correctly reflect its legislative intention.

The Supreme Court of Kentucky, in Pollitt v. Lewis, declared: "A junior college, the principal work of which is the maintenance of courses of instruction in advance of the instruction maintained in high schools, is not a part of the common school system...."[28] This case involved a state statute authorizing boards of education to establish junior colleges, and requiring the legislative body of a city to levy a tax when requested by the board. The court found that the statute violated the state constitutional provision that no sums shall be raised for education except in common schools. The court, on the basis of the post-secondary nature of the curriculum, declared that the junior college was not a common school.

It is interesting to note that the courts have not felt the need to be as innovative as the state legislatures in their definitions regarding junior colleges. In Yanow et al. v. Seven Oaks Park, Inc. et al., the Supreme Court of New Jersey held that the term "public schools" did not include "higher seminaries of learning such as academies and colleges."[29] This court did not deviate from the traditional secondary and higher education conceptual scheme. This court placed professional and technical schools outside of public education, when they are in the post-secondary level.[30] It follows that such schools are included within the concept of higher education, not entirely on the basis of curriculum, but on the basis the courts simply have no other place for them.

The court in Princeton Twp. v. Institute for Advanced Study[31] provided a most liberating concept for American

education yet presented in the courts:

> "We are not persuaded that "college," as used in the statute, is to be confined to the kind of institution that has become so familiar to us, where there are teachers and pupils, courses of instruction, a conferring of degrees, and an extended discipline. The concept of a college is an organic one, taking a varying aspect in different times and places."[32]

The court continues:

> "A college, in whatever mold it be cast, is expected to be perpetual in its service and undeviating in its ultimate purpose, which is the elimination of the false and the fostering of the true. There must of necessity be a flexibility of form and approach if this goal is even to be approximated."[33]

The position of the junior college in American education must be understood from two perspectives. First, the junior college must be viewed as an innovative institution, crossing some of the barriers in traditional education, and ignoring others. It does serve students of the high school or secondary level, and it also does serve students of college or higher educational levels. But we must keep in mind that the preponderance of the junior college curriculum is devoted to those who have completed high school or its equivalent. Many of the students in junior colleges have no need for the traditional levels. These people are working at job training or vocational programs. Individuals who enter the junior college for general education courses in areas of particular interest, have no need to be sectioned off into some level of education. These people work toward a particular goal that

is personal to themselves, and cannot be fitted into the traditional conceptual scheme. But it is apparent that they are not secondary students. They have completed a traditional secondary education, or its equivalent, and now they are progressing according to their own needs. It was this aspect of the junior college that stimulated innovative legislation. The need to define the junior college as something apart from traditional concepts is apparent. Legislatures recognized early, that if the spirit of the junior college was to flourish, it must be liberated from the chains of tradition. Such limitations diminish mobility, and corrode the objective of the junior college to go where it recognizes needs.

Conflict does exist with the existing educational structure, hence, the second aspect of junior colleges, and their position in education. One must recognize the traditional structure, and the need for junior colleges to operate within some framework including these institutions.

The junior college struggles for a new identity, and in the struggle, has gained no definite identity within the traditional framework of education. This lack of identity with any particular educational body has probably served as an asset to the activities of the junior college.

But the courts are clear, that if an identity must be sought from within the traditional framework of education, the junior college is more appropriately a part of higher education than of secondary education.

## Footnotes

1. Lynch et al. v. Commissioner of Education et al., 56 N.E.2d 896, (Sup. Jud. Ct. Mass. 1944).

2. Northhampton County v. Lafayette College, 128 Pa. 132, 18 A. 516, (Sup. Ct. Pa. 1889).

3. F.S. 228.041(1)(b), as amended, (Supp., 1970-71).

4. Id at 228.041(1)(a).

5. Id at 228.041(1)(b).

6. Op. Att'y. Gen., 068-89, July 24, 1968.

7. 30 F.R. 7-12, Title 45, Ch.1, Part 141, Sub part A, Section 141.1(Q).

8. C.L.Y.Y.A., Bk. 16, Part 3, 6301(2).

9. Goshen County Com. Col. Dist. v. School Dist. No.2, 399 P.2d 64, (Sup. Ct. Wyo. 1965).

10. Note 5.

11. Note 8.

12. A.C.C., 22650.

13. Id at 5552.

14. Id at 22651.

15. Daniels v. Watson, 75 N.M. 661, 410 P.2d 193, (Sup. Ct. N.M. 1966).

16. Id at 198.

17. Id at 198.

18. Three Rivers Junior College District v. Statler, 421 S.W.2d 235, (Sup. Ct. Mo. 1967).

19. Id at 237.

20. Id at 238.

21. Note 18.

22. Arizona State Bd. of Dir. v. Phoenix Union H.S. Dist., 102 Ariz. 69, 424 P.2d 819, (Sup. Ct. Ariz. 1967).

23. Mitchell v. Whittier College, 205 Cal. 744, 272 P. 748, (Sup. Ct. Cal. 1928).

24. Stowe Preparatory School, Inc. v. Town of Stowe, 205 A.2d 544, (Sup. Ct. Vt. 1964).

25. Nixon-Clay Commercial College v. Woods, 176 S.W.2d 1015, (Tex. Civ. App. Ct. 1944).

26. Id at 1018.

27. Id at 1019.

28. Pollitt v. Lewis, 108 S.W.2d 671, (Ct. of App. Ky. 1937).

29. Yanow et al. v. Seven Oaks Park, Inc. et al., 11 N.J. 341, 94 A.2d 482, (Sup. Ct. N.J. 1952).

30. Id at 486.

31. Princeton Twp. v. Institute for Advanced Study, 59 N.J., Super. 46, 157 A.2d 136, (Super, Ct. N.J. 1960).

32. Id at 139.

33. Id at 140.